



MEMO ENDORSED

March 26, 2020

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 3/26/2020

John M. Flannery

914.872.7111 (direct)

John.Flannery@wilsonelser.com

Via ECF

Hon. Valerie E. Caproni
United States District Court
Southern District of New York
40 Foley Square
Courtroom 443
New York, New York 10007

Re: *Kerr v. Physician Affiliate Group of New York, P.C. et al,*
17-cv-1777 (VEC)
File No: 18327.00009

Dear Judge Caproni:

In light of the current public health crisis, defense counsel write jointly to request a postponement of the trial, all pre-trial deadlines, and the settlement conference in this matter. Plaintiff consents to the defendants' request.

Trial is currently scheduled to begin on June 9, 2020, with the pre-trial order, motions in limine and other pre-trial filings due on April 24, 2020. Responses to motions in limine are due on May 8, 2020, and the final pre-trial conference is scheduled for May 28, 2020. The parties' settlement conference before Magistrate Judge Lehrburger is scheduled for April 16, 2020.

With respect to the settlement conference, settlement authority in this matter rests not only with PAGNY, but also with New York City Health & Hospitals Corporation and the New York City Comptroller's Office. At this time, the necessary representatives of these entities are inundated with work related to managing the public health crisis, and requiring them to attend a settlement teleconference on April 16, 2020 would present an undue burden.

With respect to trial and trial preparation, it is anticipated that, in addition to Dr. Kerr and Dr. Matari, the parties will seek to call the majority of the Metropolitan Hospital Radiology Department as witnesses. Other physicians, medical providers and members of the administration of Metropolitan Hospital are also likely to be called to testify at trial. In light of the current health crisis, it is anticipated that these doctors will not be available for trial preparation or attendance as their first priority is patient care. We are advised that the Hospital simply cannot spare any personnel during the crisis.

1133 Westchester Avenue • White Plains, NY 10604 • p 914.323.7000 • f 914.323.7001

Albany • Atlanta • Austin • Baltimore • Beaumont • Boston • Chicago • Dallas • Denver • Edgewood • Garden City • Hartford • Houston • Indiana • Kentucky
Las Vegas • London • Los Angeles • Miami • Michigan • Milwaukee • Missouri • New Jersey • New Orleans • New York • Orlando • Philadelphia • Phoenix
San Diego • San Francisco • Sarasota • Stamford • Virginia • Washington, DC • Wellington • White Plains

wilsonelser.com

7997801.v.1



Given the current demands and uncertainty of the situation, defendants request that the trial and all pre-trial deadlines be postponed until the Fall 2020. Additionally, we request that adequate time be built-in to the schedule so that a settlement conference may be conducted with Judge Lehrburger after the public health crisis subsides, but before the parties are forced to expend significant additional resources preparing for trial.

We thank the Court for its consideration during this difficult and uncertain situation.

Application GRANTED. Trial in this case will begin on **October 5, 2020 at 10:00 a.m.** The parties must appear for a final pretrial conference on **October 1, 2020 at 2:30 p.m.** No later than **August 21, 2020**, the parties must submit a joint pretrial order, joint requests to charge, and proposed voir dire questions. Motions in limine must be filed by **August 21, 2020**. Responses are due by **September 4, 2020**.

SO ORDERED.

A handwritten signature in blue ink that reads "Valerie Caproni".

3/26/2020

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE

cc: all counsel (via ECF)

Respectfully submitted,

WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP
Attorneys for Defendant
Physician Affiliate Group of New York

By: /s/ John M. Flannery
John M. Flannery
Eliza M. Scheibel
1133 Westchester Avenue
White Plains, NY 10604
(914) 323-7000
Our File No. 18327.00009

ABRAMS, GORELICK, FRIEDMAN &
JACOBSON, LLP
Attorneys for Defendant Dr. Hussein Matari
Steven DiSiervi
One Battery Park Plaza, 4th Floor
New York, New York
(212) 422-1200